

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 339 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair
copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation of
the constitution of India, 1950 or any order
made thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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KETAN @ TILLU SURESHCHANDRA GANDHI

Versus

STATE OF GUJARAT AND ANOTHER

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Appearance :

MR HR PRAJAPATI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/07/2006

ORAL JUDGMENT

By filing this petition, the petitioner has challenged the order of externment dated 10.06.05 passed against him by the Deputy Commissioner of Police, Zone-2, Ahmedabad which is confirmed by the appellate authority by order dated 3.1.2006.

The petitioner was issued show cause notice dated 30.4.2004 under section 59 of the Bombay Police Act, 1951 [hereinafter referred to as the Act] by which the petitioner was called upon to show cause as to why he should not be externed from Ahmedabad City and contiguous Ahmedabad Rural, Gandhinagar, Kheda and Mehsana Districts for a period of two years under section 56.B of the Act as it was found that the petitioner is a high-handed person and he is harassing the people in the area. After hearing the petitioner and considering his explanation, Deputy Commissioner of Police, Zone-2, Ahmedabad passed an order dated 10.06.2005 under section 56(B) of the Act by which the petitioner was externed from the Police Commissionerate area of Ahmedabad and contiguous Districts, i.e. Ahmedabad, Gandhinagar, Kheda and Mehsana for a period of two years from the date of execution of the order. The said order was challenged by the petitioner by way of an appeal under section 60 of the Act before the State Government. The appeal was heard by the Under Secretary, Home Department, and by order dated 03.1.2006, the appeal was dismissed. Being aggrieved thereby, the petitioner has preferred this petition under Article 226 of the Constitution of India.

Mr. H.R. Prajapati, learned advocate for the petitioner

submitted that show cause notice was issued to the petitioner on 17.10.03 but the externment order is passed on 10.06.05. It is submitted that there is delay of nearly 15 months in passing the impugned order after conclusion of arguments on behalf of the petitioner.

On behalf of the respondents, affidavit in reply is filed by S.K. Dave, Deputy Commissioner of Police, Zone-2, Ahmedabad and has tried to explain the delay in paragraph 4 of the affidavit in reply. It is averred that show cause notice was issued on 17.10.03 calling upon the petitioner to remain present before the authorities on 30.10.03. The petitioner replied to the show cause notice on 07.11.03 and thereafter sought for time for various reasons on 22.11.03, 18.11.03, 21.11.03, 09.12.03 and 15.12.03. The petitioner was called upon to remain present on 27.01.04 but he did not remain present on that date. The Presiding Officer submitted his report on 24.02.04 and thereafter final reply was filed by the petitioner on 16.03.04. Thereafter, the externment order was passed on 10.06.04. Mr. Prajapati, learned advocate for the petitioner submitted that the date 10.06.04 is not the correct date, and pointing out copy of the externment order at Annexure 'C' page 21, he submitted that the correct date is 10.06.05. Mr. Gohil, after verifying the original records available with him, stated that the same is a typographical error, and the externment order is passed on 10.06.05. Mr. Prajapati further submitted that if the authorities were satisfied that the petitioner was required to be externed on account of his alleged activities, there should not have been so much delay, and the delay vitiates the externment order.

Even going by the affidavit, there is a delay of about 15 months in passing the externment order after conclusion of the petitioner's arguments, and there is no explanation whatsoever from the respondents for the inordinate delay.

In support of his arguments, learned advocate for the petitioner has relied upon the judgment in the case of **D.B. VIHOL vs. DEPUTY COMMISSIONER OF POLICE reported in 2006 (1) GLH 513**. In that case there was an unexplained delay of four months and this Court, holding that unexplained delay is fatal to the case, quashed and set aside the externment order.

Learned advocate for the petitioner also relied on the decision of a Division Bench of this Court in the case of **SANTOSH RAMPRASAD VS. DY. COMMISSIONER OF POLICE REPORTED IN 1992 CR. L.R. (GUJ.) 360**. In the aforesaid case also, there was a delay of nearly four months in passing the externment order subsequent to the arguments. In paragraph 9 of the judgment, the Division Bench has held as under:-

“In the present case, the arguments were submitted by the externnee on 4.4.1991 and therefore, the proceedings were concluded on that day and the Externing Authority has passed the order only on 21.8.1991 i.e. after the delay of four months. No affidavit is filed to explain the delay caused in passing the order. Nothing is shown by the learned Addl. Public Prosecutor from the record to explain the delay on the part of the Externing Authority in passing the impugned order. It is true that mere delay in passing externment order cannot be

fatal to quash such an order, but in our opinion, the delay must be explained. In the present case, there is delay of nearly four months in passing the externment order subsequent to the submission of the explanation and the arguments by the petitioner herein and there is no explanation coming forth in any form. Therefore, in our opinion, the delay in the present case will vitiate the externment order passed by the authority concerned. The preventive action should be taken immediately and any inordinate delay will definitely vitiate such an action taken as a preventive measure. Similar view is taken by this High Court in the case of Chothmal Sagansingh Rajput vs.State of Gujarat and others reported in 30(1) GLR 63”.

So far as the facts of the present case are concerned, as pointed out earlier, after submission of written arguments of the externee on 16.03.04, the order of externment was passed on 10.06.05 i.e. after 15 months. In the reply filed on behalf of the respondents, there is no explanation for the delay. The order of externment is, therefore, required to be quashed and set aside on the ground of unexplained delay in passing the externment order.

Considering the aforesaid aspect of the matter, the order of externment dated 10.06.2005 and the order dated 03.01.06 passed by the appellate authority are quashed and set aside.

Rule is made absolute accordingly.

Direct Service is permitted.

[P. B. MAJMUDAR, J.]

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